

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME TALLEY,

Plaintiff,

v.

WILLIAM C HOUSER,

Defendant.

CASE NO. 3:15-CV-05668-BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR: November 27, 2015

The District Court has referred this 42 U.S.C. §1983 civil rights action to the undersigned Magistrate Judge. The Court's authority for the referral is 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff Jerome Talley filed a proposed 42 U.S.C. § 1983 complaint. Dkt. 1. Plaintiff did not pay the filing fee or file an application for leave to proceed *in forma pauperis* (IFP). *See* Dkt. 3. Plaintiff has over fifteen § 1983 cases pending before this Court. On September 24, 2015, Senior District Judge Lonny R. Suko entered an order denying plaintiff's application to proceed IFP in *Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash.) because plaintiff incurred at least three "strikes" prior to initiating the lawsuit. Judge Suko also denied the applications to proceed

1 IFP in *Talley v. Congalton, et al.*, 3:15-cv-5534-LRS (W.D. Wash.) and *Talley v. Creatura*, 3:15-
 2 cv-5585-LRS (W.D. Wash.) because plaintiff has incurred at least three “strikes.”

3 Concurring with Judge Suko, this Court finds that plaintiff incurred the following
 4 “strikes” prior to filing this lawsuit: *Talley v. Hlevinski* (E.D. Wash. Case No. 02:99-cv-5036);
 5 *Talley v. Bailey, et al.* (W.D. Wash. Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)*
 6 (W.D. Wash. Case No. 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash. Case No. 2:08-
 7 cv-01761-TSZ). *See also Talley v. Sias, et al.*, (W.D. Wash. Case No. 3:15-cv-5501-LRS). This
 8 court may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson*
 9 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

10 DISCUSSION

11 Because plaintiff has incurred at least three strikes, he may not proceed IFP unless he can
 12 show he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The
 13 imminent danger exception requires a prisoner allege a danger which is “ready to take place” or
 14 “hanging threateningly over one’s head.” *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir.
 15 2007). In this case, plaintiff’s complaint is unclear but it appears that he alleges that defendant
 16 violated plaintiff’s right to access to the courts on September 14, 2015 when plaintiff was
 17 “assailed, denied, deprived, inflicted, encroached, impeded, interfered, invaded, trespassed, [and]
 18 trammelled [sic].” Dkt. 1.

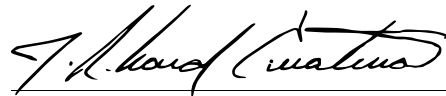
19 Plaintiff does not allege danger of any physical injury, much less an imminent serious
 20 physical danger which is “ready to take place” or “hanging threateningly over [his] head.”
 21 *Cervantes*, 493 F.3d at 1056. Therefore, this Court concludes that plaintiff is not in imminent
 22 danger in this case, and therefore, plaintiff is subject to the three-strikes rule, and should not
 23 proceed *in forma pauperis*.
 24

CONCLUSION

Plaintiff may not proceed IFP in this matter as he has incurred at least three strikes under 42 U.S.C. § 1915(g). Therefore, the Court recommends that plaintiff be ordered to pay the \$400.00 filing fee within thirty days of the District Court's order and, if the fee is not paid, dismiss this case without prejudice. All other pending motions should be denied without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of de novo review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on **November 27, 2015**, as noted in the caption

Dated this 30th day of October, 2015.



J. Richard Creatura
United States Magistrate Judge